

to the SLD Web site and the location for the SLD's description about the Form 470 fair and competitive process<sup>13</sup>. At that time all potential service providers were informed that cost was a primary consideration for the District.

## CONCLUSION

The District respectfully contends that the above documents fully support that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and in particular demonstrate that price was a primary factor in selecting a service provider's proposal. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under them require District administrators to consider price as a primary factor in the award of contracts for goods and services. The documents were not forwarded to the SLD during the PIA and Selective Review process since the specific question regarding the primacy of pricing in the evaluations was not addressed in the SLD's requests for information. Without such specific requests, the District assumed the SLD understood the fundamental legal requirements for school district purchasing under Ohio law.

The District further notes that, while its procurement practices require the determination and selection of the lowest responsible bid, the District received one, and only one, responsible bid for the wireless digital District-wide broadcast network referenced in this appeal. Secondly, there only two responsive and responsible bidders for the wireless LAN RFP also referenced in this appeal, and the District selected the proposal that offered the lower price. As such, there can be no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal." Therefore, the District respectfully requests the appeal be granted.

Respectfully submitted,



Peter A Robertson

<sup>13</sup> <http://www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2>

**Department of Research & Information**

4966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • [www.cmsdnet.net](http://www.cmsdnet.net)

**SLD Funding Denials/FY 2002-2003**

8 May 2003

**TO: Letter of Appeal  
Schools and Libraries Division**  
Universal Services Administrative Corporation  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

**RE: Letter of Appeal for Funding Commitment Denial for FY 2002**

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	323152	
Funding Request Number	864400	Tech Support for ComWeb Teaching Aid
Services Ordered	Internal Connections	
Pre-Discount Amount	\$606,225.00	
SPIN	143005079	ComWeb Technology Group, Inc
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

**FROM: Cleveland Municipal School District**

Peter A Robertson, Chief Research and Information Officer  
1380 East 6<sup>th</sup> Street  
Cleveland Ohio 44114

**E-Rate Contact:** Ilze K. Lacis  
4966 Woodland Avenue  
Cleveland, OH 44104  
Tel: 216 432 6240  
Fax: 216 432 4632  
[Lacisil@cmsdnet.net](mailto:Lacisil@cmsdnet.net)

**INTRODUCTION**

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation (USAC) to review the SLD Funding Commitment Decision regarding Funding Request Number 864400 requested in Form 471 Application Number 323152. The SLD based the denial on alleged bidding violations, explaining that the documentation provided demonstrated that price was not the primary factor in selecting this service provider's proposal.

**BACKGROUND**

The District took special efforts to encourage vendor competition, particularly for the Network Technical Support Request for Proposal (RFP). The District sent email notices to more than sixty vendors and sent notice via facsimile to additional vendors. Despite those efforts, the District received only four proposals in response to the Technical Support RFP. ComWeb Technology Group, Inc. ("ComWeb")

was one of the respondents to the District's Request for Proposal (RFP) for Technical Support. Their response was exclusively for the ComWeb's product, the Classroom Network Switch, to provide a program of maintenance and technical support encompassing the resolution of system user and/or technical problems. Teachers use the product as a teaching aid throughout the District's instructional site classrooms. The District acquired the Classroom Network Switch using E-Rate funds from Year 3 (Fiscal Year 2000-01), and ComWeb provided technical support through Fiscal Year 2001-02 as part of the acquisition contract. The other bidders submitted proposals for the District's technology network support.<sup>14</sup>

## **BASIS OF APPEAL**

The District respectfully submits that the SLD's initial denial of Funding Request Number 864400 was based on invalid assumptions since there is no information in the funding request file invalidating the District's contention that the District, in following the competitive bidding process set forth in District policy and Ohio law, selected ComWeb as the most responsive, cost effective bidder for supporting the ComWeb Classroom Network Switch. ComWeb, in fact, is the only service provider for the Classroom Switch, as it is proprietary technology. However, the District attaches to this appeal letter certain internal District documents (detailed below) to support its appeal.

During the 2002 Performance Integrity Assurance (PIA) process, the SLD did not question, nor request documents regarding, the evaluation of price during the bidding process. While materials and documents were provided to the SLD under the Selective Review Information Request for FY2002, the Selective Review did not include specific questions regarding pricing. Accordingly, the District did not forward internal documents, such as emails and the District purchasing policy, as price priority is standard procedure for all school districts governed by Ohio law. The following documents describe District policy governing procurement, refer to discussions among District bid evaluators regarding proposed project costs, and provide supporting information in order to supplement the District's previous submittals and clarify ambiguities.<sup>15</sup>

## **OHIO LAW AND DISTRICT POLICIES AND REGULATIONS MANDATE THAT THE DISTRICT CONSIDER PRICE AS A PRIMARY FACTOR, CONSISTENT WITH FEDERAL REGULATIONS**

The District is required, by both Ohio statutory law and by its own policies and regulations, to consider lowest price as a primary criterion for any purchase of goods or services, other than those services included under the definition of professional services such as architects or attorneys.

Pursuant to Ohio Revised Code Section 3311.75(B), the Board of Education of any municipal school district in Ohio must "adopt and follow procedures for the award of all contracts for supplies and services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid or request for proposal process." Although this section does except certain specific categories of contracts, maintenance of the District's internal connections is not within any of those exceptions. See Attachment A, Ohio Revised Code Section 3311.75.

Even if state law allowed an exception for this contract from the competitive bidding process, the policies adopted by the District's Board of Education, and the regulations promulgated by the District's purchasing department pursuant to those policies, make no such exception. Although state law requires competitive bidding procedures for contracts in excess of fifty thousand dollars, the District's policy is more stringent, imposing the competitive bidding process on all procurement in excess of twenty-five thousand dollars, or for consulting services in excess of ten thousand dollars. See Attachment B, Sealed Bid Procedure, at 28 (General Information).

The District's regulation of the procurement process includes multiple levels to assure low price is a primary consideration. Upon bid opening, the District's Director of Purchasing is responsible for making an initial evaluation of all bids. Based upon that evaluation, the District may reject all bids submitted if

<sup>14</sup> A separate appeal addresses the District's choice for a service provider for the network technology support service.

<sup>15</sup> The documents include: OHIO REV. CODE § 3311.75, CLEVELAND MUNICIPAL SCHOOL DISTRICT SEALED BID PROCEDURE, various contemporaneous emails and meeting notes, and spreadsheets developed as part of the evaluation process.

the Director of Purchasing determines that all bids include excessive prices. See *id.* at 34. Once the District's Purchasing Director has determined that responsive and responsible bids have been received, the Bid Evaluation process requires determination of the lowest responsible bid. See *id.* Purchasing Regulations state that "the award will be made to the lowest responsible bidder whose bid is most advantageous to the District." *Id.* The District respectfully submits that, although its documentation did not include a copy of its internal policy for bid evaluation, the SLD should have relied upon the existence of state and local procurement rules and practices, because such rules will generally consider cost to be a primary factor in order to select the most cost-effective bid.

**ADDITIONAL SUPPORTING DOCUMENTS FOR APPEAL  
(Not forwarded to the SLD previously)**

There is no evidence to support a determination that price was not the primary factor in selecting ComWeb's proposal for FRN 864400. Absent some evidence to the contrary, the District is entitled to an assumption that its local procedures and its incentive to minimize its own undiscounted share are sufficient to conclude the District has selected the most cost-effective bid for services.<sup>16</sup>

Price was a primary and dominant consideration for the District in evaluating proposals/bids and in making the final service provider selections. In an initial e-mail communication from the District's E-Rate manager, Ilze K. Lacis, on October 22, 2001, to her supervisors and two key MIS staff (Chief Information and Research Officer Peter A. Robertson, Interim MIS Executive Director Mark Hogan, the MIS operations director and MIS manager), Ms. Lacis states "...Price is a dominant consideration." In the same e-mail, at point number (3), Ms. Lacis again emphasized that, "The selection criteria (for the bid evaluations) is weighted with price as the dominant, but not exclusive factor." See Attachment C, email from Ilze K. Lacis dated October 22, 2001.

A day later, October 23, 2001, the chief research and information officer forwarded the same e-mail to the District's Technology Steering Committee as an agenda item for the Committee's weekly meeting, stating "the goal is to do it (the E-Rate process) right!" The intent was to inform and educate broad District sectors about E-Rate regulations and requirements. See Attachment D, email from Peter A. Robertson dated October 23, 2001.

At two broad-based brainstorming and planning sessions on October 29, 2001 and on November 7, 2001, the E-Rate manager explained pertinent information about the District's participation in the E-Rate program. At the outset of the meeting, "[p]articular attention was given to full and complete compliance with District, State and FCC/E-Rate rules and regulations for a strong and open bidding process," (Attachment F) including evaluation criteria with cost carrying the heaviest weight among the criteria. Cross-departmental District decision-makers and external participants from key academic, university, educational and civic non-profit institutions and organizations participated in the meeting. One of the principal reasons for the sessions was to develop a clear, accurate, E-Rate-compliant process for the District's funding requests from the SLD.<sup>17</sup> See Attachment E, dated October 26, 2001, and Attachment F, dated December 12, 2001.

A section of the Request for Proposal (RFP) document asked vendors to supply information or actions that the District could take to lessen the financial cost. Proposal evaluators reviewed this proposal section, and queried vendors in the evaluation/proposal presentation sessions regarding cost. See Attachment G, Request for Proposal.

The District's E-Rate office prepared a series of spreadsheets listing submitted proposals for the RFPs. The spreadsheets were used at proposal evaluation sessions to help evaluate the bids. The spreadsheet layout demonstrates that cost was a dominant and primary criterion for the discussions. It is obvious that the spreadsheets' essential and primary function was to guide evaluators regarding bidders' proposal costs, both overall and how the District's required percentage payment impacts the District's budget. Evaluators, of course, also considered other factors, such as technological merit, integration into existing infrastructure, and other criteria. The spreadsheets noted here were internal,

<sup>16</sup> See *In re Tennessee Dept. of Educ.*, 14 FCC Rcd. 13734, 13739 (1999).

<sup>17</sup> See also Other Supporting Information, below.

working documents, and as such, were not forwarded to the SLD in the Selective Review process. For an example, see Attachment H, Spreadsheet for Evaluation.

Furthermore, Interim Executive Director Mark Hogan addressed the issue in an email, dated January 7, 2002, referencing evaluations for network cabling and network maintenance. The emailed notes specifically refer to cost, using percentages to illustrate differentials. See Attachment I, email from Mark Hogan dated January 7, 2002.

Attachments A, B, C, D, E, F, G, H, and I are incorporated by this reference as though fully rewritten here.

#### **OTHER SUPPORTING INFORMATION**

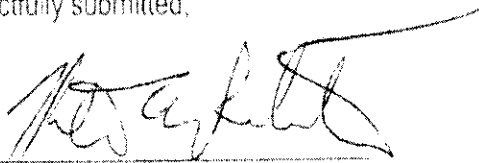
The District offered a bidders' conference concurrently with the posting of the RFPs. In the general remarks, the District informed the vendors regarding proposal evaluation criteria. Vendors were pointed to the SLD Web site and the location for the SLD's description about the Form 470 fair and competitive process<sup>18</sup>. At that time all potential service providers were informed that cost was a primary consideration for the District.

#### **CONCLUSION**

The District respectfully contends that the above documents fully support that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and in particular demonstrate that price was a primary factor in selecting a service provider's proposal. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under them require District administrators to consider price as a primary factor in the award of contracts for goods and services. The documents were not forwarded to the SLD during the PIA and Selective Review process since the specific question regarding the primacy of pricing in the evaluations was not addressed in the SLD's requests for information. Without such specific requests, the District assumed the SLD understood the fundamental legal requirements for school district purchasing under Ohio law.

The District further notes that, while its procurement practices require the determination and selection of the lowest responsible bid, the District received one, and only one, responsible bid for the service referenced in this appeal. As such, there can be no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal."

Respectfully submitted,



Peter A Robertson

<sup>18</sup> <http://www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2>

**Department of Research & Information**

4966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • [www.cmsdnet.net](http://www.cmsdnet.net)

**SLD Funding Denials/FY 2002-2003**

7 May 2003

**TO: Letter of Appeal**  
**Schools and Libraries Division**  
Universal Services Administrative Corporation  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

**RE: Letter of Appeal for Funding Commitment Denial for FY 2002**

Billed Entity Number	129482
Applicant Name	Cleveland Municipal School District f.k.a. Cleveland City School District
Form 471 Application Number	323152
Funding Request Number	862588
Services Ordered	Internal Connections
Pre-Discount Amount	\$16,465,624.00
SPIN	143005607
FCDL	March 10, 2003
Funding Year 2002	07/01/2002 – 06/30/2003
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.

**FROM: Cleveland Municipal School District**

Peter A Robertson, Chief Research and Information Officer  
1380 East 6<sup>th</sup> Street  
Cleveland Ohio 44114

**E-Rate Contact:** Ilze K. Lacis  
4966 Woodland Avenue,  
Cleveland, OH 44104  
Tel: 216 432 6240;  
Fax: 216 432 6240  
[Lacisil@cmsdnet.net](mailto:Lacisil@cmsdnet.net)

**INTRODUCTION**

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation (USAC) to review the SLD Funding Commitment Decision regarding Funding Request Number 862588, requested in Form 471 Application Number 323152. The SLD based the denial on alleged bidding violations, explaining that the documentation provided demonstrated that price was not the primary factor in selecting this service provider's proposal.

**BACKGROUND**

The District took special efforts to encourage vendor competition, particularly for the Network Technical Support Request for Proposal (RFP). The District sent email notices to more than sixty vendors and sent notice via facsimile to additional vendors. Despite those efforts, the District received only four

proposals in response to the Technical Support RFP. Of those four, the ComWeb Technology Group, Inc.'s proposal was for support specifically limited to the company's proprietary product, which teachers use throughout the District's instructional site classrooms as a teaching aid.<sup>19</sup> A second proposer, Ross-Tek, presented a bid that was so limited in scope of service that it completely failed to address the District's specifications. Thus, the District was obligated under local law to reject the Ross-Tek proposal as not responsible or responsive. Ameritech/SBC's proposal was incomplete and lacked pertinent details. The District asked Ameritech/SBC to provide the missing information by telephone, and subsequently provided the vendor an opportunity to present its proposal to the District's reviewers in person. Nevertheless, the vendor's response remained incomplete; Ameritech/SBC never provided the information and deliverables that the RFP required. This, then, left the IBM technical support proposal as the only viable and responsive proposal to consider. IBM, also, was invited to present their proposal to the evaluating committee, with a follow-up meeting to specifically discuss the costs of the proposal. The District believes that the Pre-bid Vendors' Conference and open bidding process assisted in lowering the FY 2002-2003 IBM technical support proposal cost by two million dollars (\$2,000,000.00) from the previous fiscal year.

### **BASIS OF APPEAL**

The District respectfully submits that the SLD's initial denial of funding request 862588 was based on invalid assumptions since there is no information in the funding request file invalidating the District's contention that the District, in following the competitive bidding process set forth in District policy and Ohio law, selected IBM as the most responsive, cost effective bidder. The District attaches to this appeal letter certain internal District documents (detailed below) to support its appeal.

During the 2002 Performance Integrity Assurance (PIA) process, the SLD did not question, nor request documents regarding, the evaluation of price during the bidding process. While materials and documents were provided to the SLD under the Selective Review audit for FY2002, the Selective Review did not include questions regarding pricing specifically. Accordingly, the District did not forward internal documents, such as emails and the District purchasing policy, as price priority is standard procedure for all school districts governed by Ohio law. The following documents describe District policy governing procurement, refer to discussions among District bid evaluators regarding proposed project costs, and provide supporting information in order to supplement the District's previous submittals and clarify ambiguities.<sup>20</sup>

### **OHIO LAW AND DISTRICT POLICIES AND REGULATIONS MANDATE THAT THE DISTRICT CONSIDER PRICE AS A PRIMARY FACTOR, CONSISTENT WITH FEDERAL REGULATIONS**

The District is required, by both Ohio statutory law and by its own policies and regulations, to consider lowest price as a primary criterion for any purchase of goods or services, other than those services included under the definition of professional services such as architects or attorneys.

Pursuant to Ohio Revised Code Section 3311.75(B), the Board of Education of any municipal school district in Ohio must "adopt and follow procedures for the award of all contracts for supplies and services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid or request for proposal process." Although this section does except certain specific categories of contracts, maintenance of the District's internal connections is not within any of those exceptions. See Attachment A, Ohio Revised Code Section 3311.75.

Even if state law allowed an exception for this contract from the competitive bidding process, the policies adopted by the District's Board of Education, and the regulations promulgated by the District's purchasing department pursuant to those policies, make no such exception. Although state law requires competitive bidding procedures for contracts in excess of fifty thousand dollars, the District's policy is more stringent, imposing the competitive bidding process on all procurement in excess of

<sup>19</sup> The ComWeb proposal was the subject of a separate FRN.

<sup>20</sup> The documents include: OHIO REV. CODE § 3311.75, CLEVELAND MUNICIPAL SCHOOL DISTRICT SEALED BID PROCEDURE, various contemporaneous emails and meeting notes, and spreadsheets developed as part of the evaluation process.

twenty-five thousand dollars, or for consulting services in excess of ten thousand dollars. See Attachment B, Sealed Bid Procedure, at 28 (General Information).

The District's regulation of the procurement process includes multiple levels to assure low price is a primary consideration. Upon bid opening, the District's Director of Purchasing is responsible for making an initial evaluation of all bids. Based upon that evaluation, the District may reject all bids submitted based on excessive price. See *id.*, at 34. Once the District's Purchasing Director has determined that responsive and responsible bids have been received, the Bid Evaluation process requires determination of the lowest responsible bid. See *id.* Purchasing Regulations state that "the award will be made to the lowest responsible bidder whose bid is most advantageous to the District." *Id.* The District respectfully submits that, although its documentation did not include a copy of its internal policy for bid evaluation, the SLD should have relied upon the existence of state and local procurement rules and practices, because such rules will generally consider cost to be a primary factor in order to select the most cost-effective bid.

#### **ADDITIONAL SUPPORTING DOCUMENTS FOR APPEAL (Not forwarded to the SLD previously)**

There is no evidence to support a determination that price was not the primary factor in selecting IBM's proposal for FRN 862588. Absent some evidence to the contrary, the District is entitled to an assumption that its local procedures and its incentive to minimize its own undiscounted share are sufficient to conclude the District has selected the most cost-effective bid for services.<sup>21</sup>

Price was a primary and dominant consideration for the District in evaluating proposals/bids and in making the final service provider selections. In an initial e-mail communication from the District's E-Rate manager, Ilze K. Lacis, on October 22, 2001, to her supervisors and two key MIS staff (Chief Information and Research Officer Peter A. Robertson, Interim MIS Executive Director Mark Hogan, the MIS operations director and MIS manager), Ms. Lacis states "...Price is a dominant consideration." In the same e-mail, at point number (3), Ms. Lacis again emphasized that, "The selection criteria (for the bid evaluations) is weighted with price as the dominant, but not exclusive factor." See Attachment C, email from Ilze K. Lacis dated October 22, 2001.

A day later, October 23, 2001, the chief research and information officer forwarded the same e-mail to the District's Technology Steering Committee as an agenda item for the Committee's weekly meeting, stating that "...the goal is to do it (the E-Rate process) right!" The intent was to inform and educate broad District sectors about E-Rate regulations and requirements. See Attachment D, email from Peter A. Robertson dated October 23, 2001.

At two broad-based brainstorming and planning sessions on October 29, 2001 and on November 7, 2001, the E-Rate manager explained pertinent information about the District's participation in the E-Rate program. At the outset of the meeting, "[p]articular attention was given to full and complete compliance with District, State and FCC/E-Rate rules and regulations for a strong and open bidding process," (Attachment F) including evaluation criteria with cost carrying the heaviest weight among the criteria. Cross-departmental District decision-makers and external participants from key academic, university, educational and civic non-profit institutions and organizations participated in the meeting. One of the principal reasons for the sessions was to develop a clear, accurate, E-Rate-compliant process for the District's funding requests from the SLD.<sup>22</sup> See Attachment E, dated October 26, 2001, and Attachment F, dated December 12, 2001.

A section of the Request for Proposal (RFP) document asked vendors to supply information or actions that the District could take to lessen the financial cost. Proposal evaluators reviewed this proposal section, and queried vendors in the evaluation/proposal presentation sessions regarding cost. See Attachment G, Request for Proposal.

The District's E-Rate office prepared a series of spreadsheets listing submitted proposals for the RFPs. The spreadsheets were used at proposal evaluation sessions to help evaluate the bids. The spreadsheet layout demonstrates that cost was a dominant and primary criterion for the discussions. It

<sup>21</sup> See *In re Tennessee Dept. of Educ.*, 14 FCC Rcd. 13734, 13739 (1999).

<sup>22</sup> See also *Other Supporting Information*, below.



is obvious that the spreadsheets' essential and primary function was to guide evaluators regarding bidders' proposal costs, both overall and how the Districts' required percentage payment impacts the District's budget. Evaluators, of course, also considered other factors, such as technological merit, integration into existing infrastructure, and other criteria. The spreadsheets noted here were internal, working documents, and as such, were not forwarded to the SLD in the Selective Review process. For an example, see Attachment H, Spreadsheet for Evaluation.

In an email dated January 7, 2002, to IBM, Ilze Lacis responded to a service provider (IBM) with some of the questions that evaluators would consider/ask at the vendors' presentation session. The first item noted is cost. The District was clear to all participating bidders, via the bidders' conference (see below), that cost was a primary consideration for the District. See Attachment I, email from Ilze Lacis dated January 7, 2002. The Interim Executive Director Mark Hogan responded via email, dated January 7, 2002, with evaluations for network cabling and network maintenance. The emailed notes specifically refer to cost, using percentages to illustrate differentials. See Attachment J, email from Mark Hogan dated January 7, 2002.

Attachments A, B, C, D, E, F, G, H, I, and J are incorporated by this reference as though fully rewritten here.

### **OTHER SUPPORTING INFORMATION**

The District offered a bidders' conference concurrently with the posting of the RFPs. In the general remarks, the District informed the vendors regarding proposal evaluation criteria. Vendors were pointed to the SLD Web site and the location for the SLD's description about the Form 470 fair and competitive process<sup>23</sup>. At that time all potential service providers were informed that cost was a primary consideration for the District.

### **CONCLUSION**

The District respectfully contends that the above documents fully support that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and in particular demonstrate that price was a primary factor in selecting a service provider's proposal. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under them require District administrators to consider price as a primary factor in the award of contracts for goods and services. The documents were not forwarded to the SLD during the PIA and Selective Review process since the specific question regarding the primacy of pricing in the evaluations was not addressed in the SLD's requests for information. Without such specific requests, the District assumed the SLD understood the fundamental legal requirements for school district purchasing under Ohio law.

The District further notes that, while its procurement practices require the determination and selection of the lowest responsible bid, the District received one, and only one, responsible bid for the service referenced in this appeal. As such, there can be no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal."

Respectfully submitted,

  
Peter A. Robertson

<sup>23</sup> <http://www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2>

**Department of Research & Information**

4966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • [www.cmsdnet.net](http://www.cmsdnet.net)

**SLD Funding Denials/FY 2002-2003**

8 May 2003

**TO: Letter of Appeal**  
**Schools and Libraries Division**  
Universal Services Administrative Corporation  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

**RE: Letter of Appeal for Funding Commitment Denial for FY 2002**

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	321819	
Funding Request Number	857405	Measured Business Telephone Lines
Services Ordered	Telecommunications	
Pre-Discount Amount	\$55,452.00	
SPIN	143001688	Ameritech-Ohio
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

**FROM: Cleveland Municipal School District**

Peter A Robertson, Chief Research and Information Officer  
1380 East 6<sup>th</sup> Street  
Cleveland Ohio 44114

**E-Rate Contact:** Ilze K. Lacis  
4966 Woodland Avenue  
Cleveland, OH 44104  
Tel: 216 432 6240  
Fax: 216 432 4632  
[Lacisil@cmsdnet.net](mailto:Lacisil@cmsdnet.net)

**INTRODUCTION**

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation (USAC) to review the SLD Funding Commitment Decision regarding Funding Request Number 857405 requested in Form 471 Application Number 321819. The SLD based the denial on alleged bidding violations, explaining that the documentation provided demonstrated that price was not the primary factor in selecting this service provider's proposal.

**BACKGROUND**

The District has a number of telephone lines that are not integral to the District's Centrex system. The service provider for these Measured Business Lines has been Ameritech/SBC, who owns the local voice lines. The District took special efforts to encourage vendor competition for the Measured Business Lines Request for Proposal, sending email notices to more than sixty vendors, facsimile notification to additional vendors, along with targeted advertisement placement. Despite those efforts, there were only

three respondents to the Request for Proposal (RFP) for the Measured Business Line service. One of the bidders, Warwick Communications, Inc., was eliminated because of its price was based upon reselling telephone lines Warwick leased from Ameritech/SBC; the added cost made the bid noncompetitive. The second bidder, XO Communications, offered a price \$4,452.00 less than the Ameritech proposal. XO's apparent low bid did not, however, account for the additional expense to audit the District's existing measured business lines that would be necessary in order to change vendors.<sup>24</sup> That expense would range from \$15,000 to \$20,000, based on the District's prior evaluation. Furthermore, the District had begun discussions with Ameritech/SBC regarding moving the Measured Lines into the District's existing Centrex system. Therefore, the District's evaluating committee selected the current provider, SBC/Ameritech, because all expenses were reflected in the bid price, and the price reflected the best value to the District for the amount expended.

## **BASIS OF APPEAL**

The District respectfully submits that the SLD's initial denial of Funding Request Number 857405 was based on invalid assumptions since there is no information in the funding request file invalidating the District's contention that the District, in following the competitive bidding process set forth in District policy and Ohio law, selected Ameritech/SBC as the most responsive, cost effective bidder to provide service for the District's Measured Business Lines. However, the District attaches to this appeal letter certain internal District documents (detailed below) to support its appeal.

During the 2002 Performance Integrity Assurance (PIA) process, the SLD did not question, nor request documents regarding, the evaluation of price during the bidding process. While materials and documents were provided to the SLD under the Selective Review Information Request for FY2002, the Selective Review did not include specific questions regarding pricing. Accordingly, the District did not forward internal documents, such as emails and the District purchasing policy, as price priority is standard procedure for all school districts governed by Ohio law. The following documents describe District policy governing procurement, refer to discussions among District bid evaluators regarding proposed project costs, and provide supporting information in order to supplement the District's previous submittals and clarify ambiguities.<sup>25</sup>

## **OHIO LAW AND DISTRICT POLICIES AND REGULATIONS MANDATE THAT THE DISTRICT CONSIDER PRICE AS A PRIMARY FACTOR, CONSISTENT WITH FEDERAL REGULATIONS**

The District is required, by both Ohio statutory law and by its own policies and regulations, to consider lowest price as a primary criterion for any purchase of goods or services, other than those services included under the definition of professional services such as architects or attorneys.

Pursuant to Ohio Revised Code Section 3311.75(B), the Board of Education of any municipal school district in Ohio must "adopt and follow procedures for the award of all contracts for supplies and services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid or request for proposal process." Although this section does except certain specific categories of contracts, maintenance of the District's internal connections is not within any of those exceptions. See Attachment A, Ohio Revised Code Section 3311.75.

Even if state law allowed an exception for this contract from the competitive bidding process, the policies adopted by the District's Board of Education, and the regulations promulgated by the District's purchasing department pursuant to those policies, make no such exception. Although state law requires competitive bidding procedures for contracts in excess of fifty thousand dollars, the District's policy is more stringent, imposing the competitive bidding process on all procurement in excess of

<sup>24</sup> An audit of existing service would be needed because measured business lines, although they might remain physically in place, are not always in service. The audit would determine the actual number of lines in service and thus the actual cost to the District. The RFP specified a per-line bid based on 200 measured business lines in service.

<sup>25</sup> The documents include: OHIO REV. CODE § 3311.75, CLEVELAND MUNICIPAL SCHOOL DISTRICT SEALED BID PROCEDURE, various contemporaneous emails and meeting notes, and spreadsheets developed as part of the evaluation process.

twenty-five thousand dollars, or for consulting services in excess of ten thousand dollars. See Attachment B, Sealed Bid Procedure, at 28 (General Information).

The District's regulation of the procurement process includes multiple levels to assure low price is a primary consideration. Upon bid opening, the District's Director of Purchasing is responsible for making an initial evaluation of all bids. Based upon that evaluation, the District may reject all bids submitted if the Director of Purchasing determines that all bids include excessive prices. See *id.* at 34. Once the District's Purchasing Director has determined that responsive and responsible bids have been received, the Bid Evaluation process requires determination of the lowest responsible bid. See *id.* Purchasing Regulations state that "the award will be made to the lowest responsible bidder whose bid is most advantageous to the District." *Id.* The District respectfully submits that, although its documentation did not include a copy of its internal policy for bid evaluation, the SLD should have relied upon the existence of state and local procurement rules and practices, because such rules will generally consider cost to be a primary factor in order to select the most cost-effective bid.

#### **ADDITIONAL SUPPORTING DOCUMENTS FOR APPEAL (Not forwarded to the SLD previously)**

There is no evidence to support a determination that price was not the primary factor in selecting Ameritech/SBC's proposal for FRN 857405. Absent some evidence to the contrary, the District is entitled to an assumption that its local procedures and its incentive to minimize its own undiscounted share are sufficient to conclude the District has selected the most cost-effective bid for services.<sup>26</sup>

Price was a primary and dominant consideration for the District in evaluating proposals/bids and in making the final service provider selections. In an initial e-mail communication from the District's E-Rate manager, Ilze K. Lacis, on October 22, 2001, to her supervisors and two key MIS staff (Chief Information and Research Officer Peter A. Robertson, Interim MIS Executive Director Mark Hogan, the MIS operations director and MIS manager), Ms. Lacis states "...Price is a dominant consideration." In the same e-mail, at point number (3), Ms. Lacis again emphasized that, "The selection criteria (for the bid evaluations) is weighted with price as the dominant, but not exclusive factor." See Attachment C, email from Ilze K. Lacis dated October 22, 2001.

A day later, October 23, 2001, the chief research and information officer forwarded the same e-mail to the District's Technology Steering Committee as an agenda item for the Committee's weekly meeting, stating "the goal is to do it (the E-Rate process) right!" The intent was to inform and educate broad District sectors about E-Rate regulations and requirements. See Attachment D, email from Peter A. Robertson dated October 23, 2001.

At two broad-based brainstorming and planning sessions on October 29, 2001 and on November 7, 2001, the E-Rate manager explained pertinent information about the District's participation in the E-Rate program. At the outset of the meeting, "[p]articular attention was given to full and complete compliance with District, State and FCC/E-Rate rules and regulations for a strong and open bidding process," (Attachment F) including evaluation criteria with cost carrying the heaviest weight among the criteria. Cross-departmental District decision-makers and external participants from key academic, university, educational and civic non-profit institutions and organizations participated in the meeting. One of the principal reasons for the sessions was to develop a clear, accurate, E-Rate-compliant process for the District's funding requests from the SLD.<sup>27</sup> See Attachment E, dated October 26, 2001, and Attachment F, dated December 12, 2001.

A section of the Request for Proposal (RFP) document asked vendors to supply information or actions that the District could take to lessen the financial cost. Proposal evaluators reviewed this proposal section, and queried vendors in the evaluation/proposal presentation sessions regarding cost. See Attachment G, Request for Proposal.

The District's E-Rate office prepared a series of spreadsheets listing submitted proposals for the RFPs. The spreadsheets were used at proposal evaluation sessions to help evaluate the bids. The spreadsheet layout demonstrates that cost was a dominant and primary criterion for the discussions. It

<sup>26</sup> See *In re Tennessee Dept. of Educ.*, 14 FCC Rod. 13734, 13739 (1999).

<sup>27</sup> See also Other Supporting Information, below.

is obvious that the spreadsheets' essential and primary function was to guide evaluators regarding bidders' proposal costs, both overall and how the Districts' required percentage payment impacts the District's budget. Evaluators, of course, also considered other factors, such as technological merit, integration into existing infrastructure, and other criteria. The spreadsheets noted here were internal, working documents, and as such, were not forwarded to the SLD in the Selective Review process. For an example, see Attachment H, Spreadsheet for Evaluation.

Furthermore, Interim Executive Director Mark Hogan addressed the issue in an email, dated January 7, 2002, referencing evaluations for network cabling and network maintenance. The emailed notes specifically refer to cost, using percentages to illustrate differentials. See Attachment I, email from Mark Hogan dated January 7, 2002.

Attachments A, B, C, D, E, F, G, H, and I are incorporated by this reference as though fully rewritten here.

#### **OTHER SUPPORTING INFORMATION**

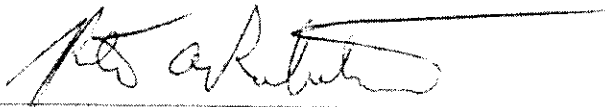
The District offered a bidders' conference concurrently with the posting of the RFPs. In the general remarks, the District informed the vendors regarding proposal evaluation criteria. Vendors were pointed to the SLD Web site and the location for the SLD's description about the Form 470 fair and competitive process<sup>28</sup>. At that time all potential service providers were informed that cost was a primary consideration for the District.

#### **CONCLUSION**

The District respectfully contends that the above documents fully support that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and in particular demonstrate that price was a primary factor in selecting a service provider's proposal. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under them require District administrators to consider price as a primary factor in the award of contracts for goods and services. The documents were not forwarded to the SLD during the PIA and Selective Review process since the specific question regarding the primacy of pricing in the evaluations was not addressed in the SLD's requests for information. Without such specific requests, the District assumed the SLD understood the fundamental legal requirements for school district purchasing under Ohio law.

The District further notes that, while its procurement practices require the determination and selection of the lowest responsible bid, the District received one, and only one, responsible bid for the service referenced in this appeal. As such, there can be no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal."

Respectfully submitted,



Peter A. Robertson

<sup>28</sup> <http://www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2>

Universal Service for Schools, Inc. 10000  
10000 Universal Service for Schools, Inc. 10000

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXXIII. EDUCATION--LIBRARIES  
CHAPTER 3311. SCHOOL DISTRICTS  
MUNICIPAL SCHOOL DISTRICTS UNDER FEDERAL COURT ORDERS

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Current through 3/30/03, including File 1 of the 125th GA (2003-2004),  
apv. 3/7/03

3311.75 SCHOOL DISTRICT AND MUNICIPAL POWERS, PROPERTY, BUDGETS, AND FUNDS  
TO BE KEPT SEPARATE; COMPETITIVE BIDDING REQUIREMENTS

(A) A board of education appointed by the mayor pursuant to division (B) or (F) of section 3311.71 of the Revised Code shall have no right, title, or interest in the funds or property of any municipal corporation. The budgets of the municipal school district and the municipal corporation shall be estimated, planned, and financed separately. At no time shall any funds of the school district and the municipal corporation be commingled in any manner and all school district funds and accounts shall be maintained and accounted for totally independently of any funds and accounts of the municipal corporation.

(B) The board of a municipal school district shall adopt and follow procedures for the award of all contracts for supplies or services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid or request for proposal process. This division is supplemental to section 3313.46 of the Revised Code. This division does not apply to contracts of employment or to contracts for professional services; to contracts for the security and protection of school property; in cases of urgent necessity as determined by two-thirds vote of the board; or in any of the situations described in division (B) of section 3313.46 of the Revised Code to which the bid process of division (A) of that section does not apply.

CREDIT(S)

(1997 H 269, eff. 11-12-97)

<General Materials (GM) - References, Annotations, or Tables>

R.C. § 3311.75

OH ST § 3311.75

END OF DOCUMENT



## **SECTION VII**

### **SEALED BID PROCEDURE**

#### **REQUEST FOR BIDS (Formal Bidding)**

- General Information
- Preparation of a Request for Bids Packet
- Distribution of Request for Bids Packet
- Bidders Key Submissions
- Receiving Bids
- Opening of Bids
- Determination of Responsive Bids
- Rejection of all Bids
- Evaluation of Bids
- Determination of Responsive Bidder
- Single Bid
- Tied Bids
- Bid Review Committee
- The Bid Award Process
- Contract Execution
- Contract Administration
- Summary of Actions and Responsibilities for Request for Bids

#### **EXHIBITS**

- RFB-1 Insurance Accord Form
- RFB-2 Bidder Qualification Form
- RFB-3 Non-Collusion Affidavit

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**REQUEST FOR BIDS (Formal Bidding)**

Attachment B – Page 2

**GENERAL INFORMATION**

Pursuant to Board policy and administrative regulations, formal competitive bidding shall be used for purchases estimated to cost \$25,000 or more, and \$10,000 for consultants.

**\*\* H.B. 269 specifies that the newly created board is to establish procedures for all contracts for supplies or services involving the expenditure of \$50,000 or more in any fiscal year. \*\***

Affirmative answers to the following criteria will determine if the competitive sealed bidding procedure (Request for Bids) will be used.

1. Can the desired product or service be easily defined? Can a complete, adequate and realistic set of specifications be developed?
2. Is there more than one responsive vendor willing and able to compete for the bid?
3. Can the selection of the product or service be made principally on the basis of price?
4. Is the purchase within the categories regulated and prescribed by Federal Regulations, Ohio Revised Code, Board policy and administrative regulations?
5. Is the purchase of the product or service planned for a specific operations period, such as a school year? or for a specified task?
6. Is the anticipated total value of the product or service from a single supplier \$25,000 or more?

If the "Request for Bids" procedure is used for a purchase, the following requirements shall apply?

1. The "Request for Bids" shall be publicly advertised.
2. Bids shall be solicited from a minimum of three (3) or more suppliers.
3. A minimum of 28 consecutive days excluding holidays shall be allowed from the date the advertisement first appears to the date the bids are due and publicly opened.
4. The "Request for Bids" shall clearly define the products or services needed.
5. All bids shall be opened publicly at the time, date and place specified in the "Request for Bids". All vendors participating in the bidding are invited to attend the bid opening.
6. Any bid may be withdrawn prior to the opening of bids; any bid received after the time and date specified shall not be considered.
7. A purchase agreement or contract award shall be made by written notice to the successful responsible bidder whose bid conforms to the bidding documents and is lowest in price.
8. The Board of Education reserves the right to waive any informality, to accept or reject any or all bids in the best interest of the District when there is sound reasons to do so.

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## REQUEST FOR BIDS PACKET

Attachment B Page 3

Bidding documents for the purchase of goods, equipment or services costing \$25,000 or more must be prepared in the following format:

1. **Title Page** - The first page of the Bid packet will designate a formal name for the product or service to be bid. The format for the Title Page will always be the same, except the name of the product/service will change.
2. **Table of Contents** - A listing by page number of the main documents in the bid packet will constitute the Table of Contents.
3. **Legal Advertisement** - A copy of the formal newspaper advertisement announcing the Request for Bids, specifying what is bid and the bid opening date. In order to establish a firm bid opening date, the dates when the legal advertisement is to appear in the newspaper must first be determined. The advertisement for bids must appear at least once a week during a 28-day period in at least two newspapers having a general circulation in the district.
4. **Letter to Potential Suppliers** - Includes Invitation to Pre-Bid Conference.

In order to maintain contact with current vendors and attract new vendors, the Purchasing Division shall conduct bidders' conferences for each formal bid. The conference will serve to give all interested vendors an opportunity to better understand what is required of them and the expectations of the Cleveland Municipal Schools from the successful bidder. The conference will inform vendors as to how bid specifications are developed, explain evaluation and selection criteria, bond requirements and contract award procedures. All this taken into consideration, the bidders' conference should yield better and more responsible bid submissions.

The pre-bid conference is an important part of the formal bidding process. The conference will be scheduled around the midpoint of the 28-day advertisement period, during normal business hours.

A record shall be made of all bidders (and their organization) who attend the conference.

Any changes or clarification to the specifications, bid opening date, general instructions, etc., shall be accomplished by an addendum to the Request for Bids. All prospective bidders who received a Request for Bids shall be sent an addendum. The addendum will become a part of the Request for Bids packet.

5. **Instructions to Bidders** - This section of the Request for Bids packet will contain the general requirements for bids to be responsive. This section will explain the documents to be completed by the bidder, delivery and payment terms, adherence to Diversity and vendor contract compliance requirements and a sample of an agreement and how the bid will be awarded.
6. **Bid Form** - The Bid Form is a form, which the bidder completes and signs to acknowledge understanding and agreement with the terms, conditions and specifications, etc., of the bid. It also includes a section for the bidder to record his/her bid.

7. **Specifications** - Specifications is a detailed description of the item or service to be bid upon. Specifications are usually prepared by the requisitioner. If specifications are prepared by Purchasing, the requisitioner must approve them.

Statements of specifications describing the items or services needed are the most important ingredients in establishing clear communications with vendors, leading to a competitive bidding climate that benefits both vendor and District.

8. **Sample Submission** - If samples will be required to fully evaluate a bid and its product, a notation will be made in the bid specifications detailing whose attention the sample is to be sent and to which location.

9. **Bid Bond and Performance Bond Requirements**

- A. **Bid Bond**-A Bid Bond is intended to guarantee any financial loss to the district if the successful bidder does not actually sign and/or enter into the proposed contract. The standard amount of the District bid bond is 10% of the bid, not to exceed \$100,000. However, this amount can be adjusted for certain bids, i.e. major construction projects.

Each vendor's bid shall be accompanied by a bid bond: certified check; cashier's check; or letter of credit, made payable to the Treasurer of the Cleveland Municipal School District, for not less than 10% of the total amount bid as guarantee, that if the bid is accepted, a contract will be entered into.

- I. Said bond or check shall be satisfactory to the Treasurer. Its amount shall be the measure of damages, which the District will sustain by the failure, neglect or refusal of the bidder to execute and deliver the contract. The successful bidder will provide a performance bond within fifteen days after written notification, from the Director of Purchasing of the contract award.
- II. The check shall become the property of the District if the successful bidder fails to execute the contract within fifteen days, as described above. However, if a proposal is not accepted within sixty (60) days after the proposal submission date, the check shall be returned.
- III. The District shall retain the bid bonds and/or certified checks of the successful and second lowest and responsible bidder until the bidder selected executes and delivers a contract. Should the selected bidder default, the contract shall be awarded to the next lowest and responsible bidder, or new bids shall be called for at the discretion of the Director of Purchasing.

**B. Performance Bond**

Attachment B Page

A performance Bond is a guarantee against financial loss due to the vendor's failure to complete the terms of the contract.

The surety that issued the bid bond will normally issue a Performance Bond. The performance Bond should reflect the maximum financial loss the District may incur if the contractor fails to complete the contract. While a bond of 100% of the bid amount provides maximum guarantee, a lesser amount may be realistic in many situations.

For a repair/construction related contract, the Bond shall consist of a "Performance Bond" and a "Labor and Materials Payment Bond".

The successful contractor shall furnish a Performance Bond in the amount of 100% of the contract amount for repair/construction related contracts; 10% for all other contracts (i.e., supplies, materials, etc.) for full and faithful performance of the work herein specified.

Bid and Performance Bonds shall be with a surety licensed to do business in the State of Ohio and financially acceptable to the Treasurer, or if certified check, financial institution acceptable to the Treasurer.

Performance and/or bid bonds waivers may be granted by the Diversity Officer, in consultation with the Chief Operating Officer to certified minority businesses.

10. **Liability Insurance Requirements** - The following general liability insurance requirements shall apply for vendors, contractors, service organizations or similar suppliers of services and materials, doing business with the Cleveland Board of Education and/or having personnel, equipment or vehicles on Board premises. These are basic requirements and are intended to protect the District. Should contracts involve special or unusual circumstances or provisions, the Insurance Department should be contacted for possible changes or alternative specifications.

- A. Comprehensive General Liability - \$1,000,000 (or more) limit of liability including products and completed operations (per occurrence limits).

All contracts involving maintenance, construction, erection or demolition must have XCU (explosion, collapse, and underground work) exclusion eliminated.

- B. Auto Liability - \$1,000,000 limit of liability, including non-owned vehicles (per occurrence limits).

The vendor awarded a specific contract may meet these requirements by providing a certificate of insurance (standard Acord Form - Exhibit RFB-1) indicating at least the above limits with the District as an additional insured with a sixty (60) day notice of cancellation provision.

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Attachment B -

Above insurance must be provided by a company licensed in the State of Ohio and/or must be financially acceptable to the Treasurer.

The above specifications will provide reasonable and adequate insurance protection for the District in the majority of purchase contract agreements. However, it can be anticipated there are situations that do not fit the "usual", and adjustments to the standard insurance requirements are appropriate:

- I. *Certain consulting or professional service contracts should include a requirement for evidence of professional liability insurance.*
- II. *Vendors providing consumable food products are required to provide limits of liability (\$5,000,000).*
- III. *Major construction contracts may require that builders risk insurance be provided or similar special provisions.*

Any department preparing bid or proposal specifications and having any questions pertaining to insurance matters, should contact the Treasurer's Department prior to finalizing specifications.

11. **Bidder Qualification Form**-The Bidder Qualification Form contains a series of questions that the prospective bidder must answer or explain. The questions deal with the bidder's financial status, work experience, stability and business qualifications.
12. **Diversity Business Enterprise Forms**-All prospective bidders must complete the Diversity Business Enterprise Forms contained in the bid packet. The prospective non-minority bidder must indicate minority participation in the submitted bid. (See Section XII).
13. **Equal Employment Opportunity Forms**-All vendors and contractors who provide goods and services to the District must afford their employees equal employment opportunity and must comply with the guidelines and procedures of the District's Vendor Contract Compliance Program. (See Section XII).
14. **Sample Contract or Term Agreement**-A sample Contract or Term Agreement form must be included in each bid packet to make prospective bidders aware of terms and conditions of the agreement they will be required to sign if they become a successful bidder.
15. **Non-Collusion Affidavit**-The non-collusion affidavit is a document signed by the bidder which declares that the bid submitted is an honest one based on the bidder's sole ability to develop a competitive bid without collusion with another person or bidder.

## **DISTRIBUTION OF REQUEST FOR BIDS PACKETS**

Legal Ads will be sent to all prospective bidders who appear on the Bidder's List, bidders recommend the requisitioner, and DBE vendors with the District.

All vendors/prospective bidders who respond will be mailed a "Request for Bid" packet. Any req from the public advertisement will also be mailed a bid packet. Bid packets will also be available for up from the Purchasing Division.

## **BIDDERS' KEY SUBMISSIONS**

Key actions required of all bidders include the submission of the original and copies of the following documents:

1. Completed Bid Form.
2. Ten percent (10%) Bid Bond, certified check or cashiers check.
3. Completed and notarized Bidder's Qualification Form.
4. Completed and notarized Non-Collusion Affidavit.
5. Completed and notarized DBE/AA Vendor Contract Compliance Forms.

Failure to include any of the above documents will result in a non-responsive bid. Failure to su samples, if required, will also be grounds for considering a bid to be non- responsive.

## **RECEIVING BIDS**

All bids shall be directed to the Treasurer's Office where they will be kept in a secure place prior to the opening. Any sealed bids opened by mistake, or opened as a result of poor identification of a bid pa shall be immediately resealed by the opener. The opener shall write an explanation (on the envelope) it was opened, sign his/her name and deliver the bid packet to the Treasurer's Office.

## **OPENING OF BIDS**

The Purchasing Director or his designee shall preside over the bid opening session, they shall pub open and read aloud the bids.

The Purchasing Director or his designee, the requisitioner, or other District officials present at the opening shall complete Bid Tabulation Sheets.

## **DETERMINATION OF RESPONSIVE BIDS**

In order to be considered as a responsible bid, the bid must first be determined to be responsive. In general, the bid must conform to the technical and legal requirements contained in the Request for Bi documents. The bid must include a bid guarantee, properly executed DBE/AA forms and must meet requirements contained in the Information for Bidders section. Any conditions imposed by the bidde which change the bid requirements shall be just cause to reject the bid.

## **TABULATION OF BIDS**

The Purchasing Director, or his designee is responsible to tabulate all responsive bids as soon as possible after the bid opening. The tabulation sheet and a copy of all individual bid documents shall be sent to the Purchasing Division for bid analysis/evaluation and recommendation for award. One original of each bid will remain in the Treasury Department files.

## **REJECTION OF ALL BIDS**

All bids may be rejected upon recommendation of the Purchasing Director, if after analysis of the bids it is determined that:

1. All bids are unreasonable priced.
2. There is evidence of collusion or bad faith on part of the individual vendor(s).
3. If only one bid is submitted and the price submitted is questionable as to being a reasonable price.

All bidders must be notified of the rejection of bids and the necessity to re-bid if this is determined by the Purchasing Director.

If the bid is for an item/service that is on an existing but expiring contract, and time constraints do not permit re-bidding before the old contract expires, the Purchasing Director must seek an extension of the old contract until such time as the new Request for Bids goes through the re-bid process. If the extension cost is for \$10,000 or more, the CFO must approve the extension.

## **EVALUATION OF BIDS**

Immediately following receipt of the tabulation of bids and the bid documents from the Treasurer's Office, the Purchasing Division shall distribute copies of same to the following persons to review their parts in the evaluation process:

1. Requisitioner shall review bids for their responsiveness to the specifications contained in the bid packet.
2. Diversity Officer shall review bids for their compliance with the Diversity Business Enterprise Program and the AA/Vendor Contract Compliance Program.
3. Vendors determined to be in noncompliance with the District's DBE and/or affirmative action regulations will not be awarded contracts unless waivers are granted by the District Officer, in consultation with the Chief Operations Officer.
4. The Insurance Manager shall review bids for their bond guarantees.
5. Procurement Officer shall review bids for their technical and document requirements and price analysis.

They shall make written reports of their findings to the Purchasing Director who has the primary responsibility to evaluate the bids to determine the lowest responsible bidder, and to make the recommendation for the bid award. In the final analysis, the award will be made to the lowest responsible bidder whose bid is the most advantageous to the District.

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## **DETERMINATION OF RESPONSIBLE BIDDER**

Attachment B Page

The award of public contracts is of vital interest to the taxpayers and citizens. Many state laws provide for award to the lowest responsible bidder in order to avoid favoritism and its concomitant evils. It would be unfair to bidders, who have expended time and money in the preparation of bids, to be denied equal consideration.

The basis of making awards to the lowest responsible bidder has been adopted with the view of enabling a public body to enter into contracts with efficiency and economy. This beneficial result cannot always be obtained when the award goes to the lowest bidder. Definite specifications must be adopted to enable all bidders to make intelligent bids. This establishes a common standard by which to measure the respective bids to determine the lowest responsible bidder.

The following criteria will be considered in determining the lowest responsible bidder:

1. Financial or procuring ability to complete the contract.
2. Integrity and trustworthiness.
3. Skills (technical and business).
4. Judgement.
5. Ability to perform faithful and conscientious work.
6. Promptness (deliveries and completion of work).
7. Experience.
8. Previous performance of satisfactory work.
9. Other essential factors which may be depending upon the type and kind of contract involved.

On opening and tabulating the bids, the Purchasing Director must determine two things to make a valid award:

1. The responsibility of the bidders.
2. Which of the responsible bidders has submitted the lowest responsive overall bid.

Awarding a contract required to be let to the lowest responsible bidder is mandatory and no authority, except by statute, authorizes the official to accept any other bidder.

Determination of the responsibility of a bidder by the Purchasing Director requires the exercise of judgement and discretion in favor of the District. This discretion must be exercised honestly and fairly, not arbitrarily nor capriciously. The decision must be based on facts obtained after investigation into the responsibility of the bidders which show that the lowest bidder to whom the award was not made was not a responsible bidder. Failure to make such an investigation vitiates the contract award and such award will not be upheld.



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## **THE BID AWARD PROCESS**

Attachment B Page 10

The award must be made to the successful bidder within the 60-day period specified in the bid documents.

If the bid award is to be delayed for administrative or other reasons and will not be able to be made within the specified acceptance period, bidders should be requested to extend the bid acceptance period to avoid the need for re-advertising and a re-bid. The request must be made before the expiration of the 60-day period. The bidders sureties should also be notified and their consent requested for the delay.

If the award is to be made to other than the low bidder, a full justification must be made and put into the contract file. The justification may be derived from a consensus of the Bid Review forms. The justification documentation should include the following:

1. The bid of the proposed awardees.
2. The bids of all those who were lower than the awardees.
3. A list of all bids received.
4. A copy of the Request for Bids document.
5. A summary of the Bid Review forms explaining the basis for selection of the awardees.
6. A price analysis used for determining that the price is fair and reasonable.
7. Legal opinion that the proposed award meets requirements of federal, state, and local law, if applicable.
8. An explanation of how the apparent low bidder was not responsive or responsible.

Unsuccessful bidders may request a copy of the Board Resolution to review their bid standing.

## **BID PROTEST PROCEDURE**

The purpose of this policy is to provide clear instruction as to the procedure in which suppliers are to follow to formally protest the awarding of a contract.

If a supplier wishes to make a formal complaint regarding a bid, quote or proposal they must provide a written statement to the Director of Purchasing, stating the reason(s) for their protest.

The letter must be received in the office of the Director of Purchasing by the close of business, within three (3) business days of the bid opening.

The Director of Purchasing will investigate the complaint to determine its legitimacy, and respond to the supplier within ten (10) days from receipt of the complaint.

If the supplier is not satisfied with the justification provided by the Purchasing Director, the supplier may submit a letter to the Chief Financial Officer, stating the basis of the protest.